

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Petitioner,

Civil No. 06-CV-2344-L
Criminal No. 02-CR-0624-L

ORDER:

**1) GRANTING IN PART
PETITIONER'S MOTION FOR
PRODUCTION OF TRANSCRIPTS
[Doc. No 194];**

2) GRANTING PETITIONER'S MOTION FOR EXTENSION OF TIME TO FILE REPLY [Doc. No. 209]; and

3) DENYING PETITIONER'S MOTION FOR STAY [Doc. No. 213]

UNITED STATES OF AMERICA.

Respondent.

Currently pending before the Court are several motions filed by Petitioner Duane Edward Wicker: a motion for production of transcripts, a motion for an extension of time to file a response to the Government’s opposition to Petitioner’s 28 U.S.C. § 2255 motion, and a motion to stay proceedings.¹

¹ After filing the motion for production of transcripts on November 20, 2006, Petitioner filed a notice of interlocutory appeal to the Ninth Circuit. Petitioner filed the second and third motions during the pendency of the appeal. Petitioner's appeal was dismissed by the Court of Appeals on April 10, 2007.

1 With respect to Petitioner's motion for production of transcripts, the Court has previously
 2 advised Petitioner that in order to obtain transcripts at government expense, he must demonstrate
 3 that the suit is not frivolous and that the transcript is needed to decide an issue presented by the
 4 suit. (Order Denying Defendant's Motion for Production of Documents Pursuant to 28 U.S.C. §
 5 753(f), Doc. No. 190.) Petitioner has failed to make any specific showing regarding the merits
 6 of his § 2255 motion or the necessity for the requested transcripts.

7 This failure notwithstanding, the Court has reviewed Petitioner's § 2255 motion and notes
 8 that two issues are raised: 1) whether conflict between street gangs constitutes commerce
 9 affecting the United States; and 2) whether the Court properly instructed the jury regarding
 10 racketeering and conspiracy to commit murder. The first issue appears to be an attack on the
 11 constitutionality of 18 U.S.C. § 1959, the violent crimes in aid of racketeering statute. The
 12 docket reflects no pretrial motion raising this issue having been filed, therefore there would be
 13 no motion hearing transcript that might arguably be necessary for determination of Petitioner's
 14 motion. The trial transcript would be of no assistance to Petitioner in addressing this purely
 15 legal issue.

16 As the second issue raised in Petitioner's motion, the propriety of the Court's jury
 17 instructions, the Court will broadly construe Petitioner's request for transcripts and find that the
 18 portion of the trial transcript containing the Court's instruction of the jury may be necessary to
 19 aid Petitioner in the presentation of his § 2255 motion. Accordingly, the Court will order the
 20 Court Reporter to provide to Petitioner, at Government expense, the transcript of the Court's
 21 instruction to the jury.² Petitioner's request for the remaining portions of the trial transcript and
 22 the sentencing transcript is **DENIED**.³

23 Petitioner's request for an extension of time to file a reply to the Government's opposition
 24 to his § 2255 motion is **GRANTED**. Petitioner's request for a stay of proceedings pending

26 ² The docket reflects that the jury retired for deliberations at 2:15 p.m. on April 9, 2003.
 27 Therefore, the jury instruction presumably took place on that date.

28 ³ Petitioner also requests production of the appeal transcripts. This Court is not a
 29 position to order production of transcripts, if there are any, of proceedings held before the Ninth
 30 Circuit Court of Appeals.

1 determination of his request for transcripts is **DENIED AS MOOT**. Therefore, based on the
2 foregoing,

3 **IT IS HEREBY ORDERED** that the Court Reporter provide Petitioner with a copy of
4 the transcript of the Court's instruction to the jury at Government expense. The transcript should
5 be mailed to Petitioner within 15 days of this Order.

6 **IT IS FURTHER ORDERED** that Petitioner shall have until **July 13, 2007** to file a
7 reply to the Government's response and opposition to his § 2255 motion.

8 **IT IS SO ORDERED.**

9
10 DATED: May 23, 2007

11 
12 M. James Lorenz
13 United States District Court Judge

14 Copy:

15 Petitioner
16 U.S. Attorney's Office
17 I. Van Bramer, Court Reporter

18

19

20

21

22

23

24

25

26

27

28